

HOUSE BILL NO. 695

2/06 Introduced
2/06 Referred to Natural Resources
2/06 Fiscal Note Requested
2/11 Hearing
2/12 Committee Report-Bill Pass As Amended
2/13 Fiscal Note Received
2/16 2nd Reading Pass
2/18 3rd Reading Pass

Transmitted to Senate

2/19 Referred to Natural Resources
3/20 Hearing
3/28 Tabled in Committee

HOUSE BILL NO. 695

INTRODUCED BY Arny

A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING COUNTY-OPERATED OPENCUT GRAVEL MINES FROM RECLAMATION PLAN REQUIREMENTS IN THE OPENCUT MINING ACT; REQUIRING COUNTIES TO FILE ANNUAL REPORTS CONCERNING RECLAMATION AT THEIR OPENCUT GRAVEL MINES; AND REQUIRING ANNUAL INSPECTION OF SUCH MINES BY THE DEPARTMENT OF STATE LANDS; AMENDING SECTIONS 82-4-403 AND 82-4-434, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 82-4-403, MCA, is amended to read:

"82-4-403. Definitions. When used in this part, unless a different meaning clearly appears from the context, the following definitions apply:

(1) "Affected land" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited.

(2) "Board" means the state board of land commissioners.

(3) "Contract" means a mined land reclamation contract prepared by the board to meet the requirements of this part.

(4) "Department" means the department of state lands.

~~(4)~~(5) "Final cut" means the last pit created in an

opencut-mined area.

~~(5)~~(6) "Highwall" means that side of the pit adjacent to unmined land.

~~(6)~~(7) "Landowner" means the owner of land directly or indirectly affected by an opencut-mining operation.

~~(7)~~(8) "Opencut mining" means the mining of bentonite, clay, scoria, phosphate rock, sand, or gravel by removing the overburden lying upon natural deposits thereof and mining directly from the natural deposits thereby exposed, including the removal of overburden for the purpose of determining the location, quality, or quantity of any natural deposit of bentonite, clay, scoria, phosphate rock, sand, or gravel.

~~(8)~~(9) "Operator" means a person engaged in and controlling an opencut-mining operation.

~~(9)~~(10) "Overburden" means all of the earth and other materials which lie above a natural deposit of bentonite, clay, scoria, phosphate rock, sand, or gravel. "Spoil" is the overburden disturbed from its natural state in the process of opencut mining.

~~(10)~~(11) "Person" means a natural person or a firm, association, partnership, cooperative, or corporation or any department, agency, or instrumentality of the state or any governmental subdivision or any other entity whatever.

~~(11)~~(12) "Progress report" means a report showing the



1 land which the operator has affected by opencut mining
2 during the year. The report shall show the number of acres
3 of affected land and all reclamation accomplished.

4 ~~(12)~~(13) "Public notice" means notice given by
5 publication in a newspaper in the general area where the
6 affected land is located. The notice shall be given once a
7 week for 3 successive weeks.

8 ~~(13)~~(14) "Reclamation" means the reconditioning of the
9 area of land affected by opencut-mining operations to make
10 the area suitable for productive use, including but not
11 limited to forestry, agriculture, grazing, wildlife,
12 recreation, or residential and industrial sites.

13 ~~(14)~~(15) "Reclamation plan" means the description of
14 current land use, topographical data, water data, soils
15 data, leased areas, intended mine areas, and an explanation
16 of proposed reclamation of the land with appropriate maps.

17 ~~(15)~~(16) "Refuse" means all waste material directly
18 connected with the opencut-mining operations.

19 ~~(16)~~(17) "Soils materials" are those horizons
20 containing topsoil or other soils leached free of
21 deleterious salts and capable of sustaining plant growth and
22 recognized as such by standard authorities."

23 Section 2. Section 82-4-434, MCA, is amended to read:

24 "82-4-434. Reclamation plan part of contract --
25 requirements. (1) The contract shall meet the following

1 requirements:

2 ~~(1)~~(a) The operator shall submit a reclamation plan to
3 the board before commencing any opencut mining and may not
4 commence mining before the plan receives approval from the
5 board. The operator may request and receive a meeting with
6 the board prior to submission of the plan. If the board does
7 not notify the operator that it has approved or disapproved
8 a plan within 30 days after the board has received the plan,
9 the board is considered to have approved the plan. The
10 board, however, for sufficient cause, may extend its period
11 of consideration for an additional 30 days if it notifies
12 the operator prior to the end of the original 30-day period.
13 The board shall submit each reclamation plan or amendments
14 to the reclamation plan to the landowner for his
15 recommendations and shall consider those recommendations in
16 deciding whether to approve or disapprove any plan or
17 amendments. The board may seek technical help from any state
18 or federal agency. The board shall submit the plan
19 immediately to the director of the university of Montana
20 statewide archaeological survey for evaluation of possible
21 archaeological or historical values in the area to be mined.
22 The board may approve a reclamation plan only if the board
23 has found that the plan provides for the best possible
24 reclamation procedures available under the circumstances at
25 the time, so that after mining operations are completed the

1 affected land will be reclaimed to a productive use. Once
 2 the reclamation plan is accepted in writing by the board, it
 3 shall become a part of the contract but is subject to annual
 4 review and modification by the board.

5 ~~2~~(b) The board may not approve any reclamation plan
 6 unless the plan provides:

7 ~~a~~(i) that the land will be reclaimed for one or more
 8 specified uses, including but not limited to forest,
 9 pasture, orchard, cropland, residence, recreation, industry,
 10 habitat for wildlife, including food, cover, or water, or
 11 other uses;

12 ~~b~~(ii) that to the extent reasonable and practicable,
 13 the operator will establish vegetative cover commensurate
 14 with the proposed land use;

15 ~~c~~(iii) whenever operations result in a need to
 16 prevent acid drainage or sedimentation on or in adjoining
 17 lands or streams, for the construction of earth dams or
 18 other reasonable devices to control water drainage, provided
 19 the formation of such impoundments or devices will not
 20 interfere with other landowners' rights or contribute to
 21 water pollution;

22 ~~d~~(iv) that to accomplish practical utilization of
 23 soil materials, such material will be utilized for placement
 24 on affected areas, if required by the reclamation plan after
 25 completion or termination of that particular phase of the

1 mining operations, at a depth sufficient for plant growth on
 2 slopes of 3:1 or less;

3 ~~e~~(v) that grading will be commensurate with the
 4 topography sought and land use designated;

5 ~~f~~(vi) that metal and other waste will be removed or
 6 buried;

7 ~~g~~(vii) that all access, haul, and other support roads
 8 will be located, constructed, and maintained in such a
 9 manner as to control and minimize channeling and other
 10 erosion;

11 ~~h~~(viii) that the operator will submit a progress
 12 report annually to the board;

13 ~~i~~(ix) that all operations will be conducted so as to
 14 avoid range and forest fires and spontaneous combustion and
 15 that open burning of carbonaceous materials will be in
 16 accordance with suitable practices for fire prevention and
 17 control;

18 ~~j~~(x) that archaeological and historical values in
 19 areas to be mined will be given appropriate protection;

20 ~~k~~(xi) that except for rock faces, bench faces, and
 21 excavations used for water impoundments, each surface area
 22 of the mined premises which will be disturbed will be
 23 revegetated when its use for extractive purposes is no
 24 longer required;

25 ~~l~~(xii) that seeding and planting will be done in a

1 manner to achieve a permanent suitable vegetative cover for
2 wildlife, livestock, and retardation of erosion and that all
3 seed will be drilled unless otherwise provided in the plan;

4 ~~(m)~~(xiii) that reclamation will be as concurrent with
5 mining operations as feasible and will be completed within a
6 specified length of time.

7 ~~(3)~~(c) If reclamation according to the plan has not
8 been completed in the time specified, the board after 30
9 days' written notice shall order the operator to cease
10 mining and, if the operator does not cease, shall institute
11 an action to enjoin further operation and may sue for
12 damages for breach of contract, for payment of the
13 performance bond, or for both.

14 ~~(4)~~(d) ~~(a)~~(i) At any time during the period of
15 reclamation the operator may for good reason submit to the
16 board a new reclamation plan or amendment to the existing
17 plan, including extensions of time.

18 ~~(b)~~(ii) The board may approve the proposed new
19 reclamation plan or amendments to the existing plan if:

20 ~~(1)~~(A) the operator has in good faith carried on
21 reclamation according to the existing plan and the proposed
22 new plan or amendments to the existing plan will result in
23 reclamation as or more desirable than the reclamation
24 proposed under the existing plan; or

25 ~~(1)~~(B) it is highly improbable reclamation will be

1 successful unless the existing plan is replaced or amended.

2 ~~(e)~~(iii) When accepted, the proposed new reclamation
3 plan or the proposed amendments to the existing plan become
4 a part of the contract.

5 ~~(5)~~(e) The operator shall provide a performance bond
6 or an alternative acceptable to the board in an amount
7 commensurate with the estimated cost of reclamation, but in
8 no case may the bond be less than \$200 per acre. The
9 estimated cost of reclamation shall be set forth in the
10 reclamation plan.

11 ~~(6)~~(f) The contract, reclamation plan, and amendments
12 accepted by the board shall be a public record and open to
13 inspection.

14 ~~(7)~~(g) The contract shall become effective when signed
15 by the board and the operator and shall remain in force
16 until terminated by mutual consent or by the board upon 6
17 months' notice.

18 (2) The provisions of this section do not apply to
19 counties acting as operators of opencut gravel mines under
20 this part."

21 NEW SECTION. Section 3. Reporting by counties --
22 annual departmental inspection. (1) Any county having one
23 or more opencut gravel mining operations requiring a
24 contract under 82-4-431 shall submit an annual progress
25 report describing the reclamation activities at each of

1 these opencut gravel mining operations. The report must
 2 include a list of the opencut gravel mining operations, the
 3 number of yards mined at each mining operation, and an
 4 assessment of the reclamation activity at each mining
 5 operation.

6 (2) The department shall conduct an annual inspection
 7 of all county-operated opencut gravel mining operations that
 8 require a contract under 82-4-431. If the department
 9 determines that a county has not made satisfactory progress
 10 in reclaiming a disturbed area at one of these mining
 11 operations while the mining is progressing, it shall provide
 12 written notice to the county that it has 1 year from receipt
 13 of the notice to reclaim the area to departmental
 14 specifications, as stated in the notice.

15 (3) If the county fails to meet the departmental
 16 specifications within the specified time, the department may
 17 recommend and the board may order that the county comply
 18 with the provisions of 82-4-434 for that mining operation
 19 until the county demonstrates its adherence to the policy
 20 expressed in 82-4-402.

21 NEW SECTION. Section 4. Extension of authority. Any
 22 existing authority of the board of land commissioners to
 23 make rules on the subject of the provisions of this act is
 24 extended to the provisions of this act.

25 NEW SECTION. Section 5. Codification instruction.

1 Section 3 is intended to be an integral part of Title 82,
 2 chapter 4, part 4, and the provisions of Title 82, chapter
 3 4, part 4, apply to section 3.

-End-

STATE OF MONTANA
FISCAL NOTE

REQUEST NO. FNN 353-85

Form BD-15

In compliance with a written request received February 6, 19 85, there is hereby submitted a Fiscal Note for H.B. 695 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

An act exempting county-operated opencut gravel mines from reclamation plan requirements in the opencut mining act; requiring counties to file annual reports concerning reclamation at their opencut gravel mines; requiring an annual inspection of such mines by the Department of State Lands.

ASSUMPTIONS:

- 1) A small savings of \$8,250 per year will be made by doing initial inspections of the opencut gravel mines owned by the counties.
- 2) The bill will not require an additional 20 trips a year for follow-up inspections.

FISCAL IMPACT:

	<u>Under</u> <u>Current Law</u>	<u>FY 86</u> <u>Under</u> <u>Proposed Law</u>	<u>Savings</u> <u>Difference</u>	<u>Under</u> <u>Current Law</u>	<u>FY 87</u> <u>Under</u> <u>Proposed Law</u>	<u>Savings</u> <u>Difference</u>
Expenditures:	\$ 8,250	\$ -0-	\$ (8,250)	\$ 8,250	\$ -0-	\$ (8,250)
Estimated						
General Fund	\$ 8,250	\$ -0-	\$ (8,250)	\$ 8,250	\$ -0-	\$ (8,250)

AFFECT ON COUNTY OR OTHER LOCAL REVENUE:

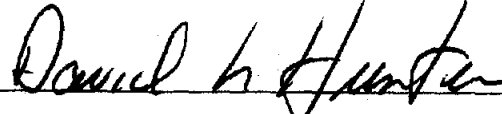
N/A

LONG-RANGE EFFECTS:

N/A

TECHNICAL NOTE:

House Bill 695 has been amended and this fiscal note may no longer be valid.



BUDGET DIRECTOR
Office of Budget and Program Planning

Date: Feb 12, 1985
NB 695

APPROVED BY COMM. ON
NATURAL RESOURCES

1 HOUSE BILL NO. 695
 2 INTRODUCED BY ASAY
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING
 5 ~~COUNTY-OPERATED--OPENCUT--GRAVEL-MINES-FROM-RECLAMATION-PLAN~~
 6 ~~REQUIREMENTS-IN-THE-OPENCUT-MINING-ACT,--REQUIRING--COUNTIES~~
 7 ~~TO--FILE--ANNUAL--REPORTS--CONCERNING--RECLAMATION--AT--THEIR~~
 8 ~~OPENCUT-GRAVEL-MINES,--AND--REQUIRING--ANNUAL--INSPECTION--OF~~
 9 ~~SUCH--MINES--BY--THE-DEPARTMENT-OF-STATE-LANDS~~ COUNTIES FROM
 10 SUBMITTING ANNUAL RECLAMATION PROGRESS REPORTS ON GRAVEL
 11 MINES THAT WERE NOT OPERATED DURING THE PRIOR REPORTING
 12 YEAR; AMENDING SECTIONS 82-4-403 AND 82-4-434, MCA."

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 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 15 Section 1. Section 82-4-403, MCA, is amended to read:
 16 "82-4-403. Definitions. When used in this part, unless
 17 a different meaning clearly appears from the context, the
 18 following definitions apply:
 19 (1) "Affected land" means the area of land from which
 20 overburden is to be or has been removed and upon which the
 21 overburden is to be or has been deposited.
 22 (2) "Board" means the state board of land
 23 commissioners.
 24 (3) "Contract" means a mined land reclamation contract
 25 prepared by the board to meet the requirements of this part.

1 (4) "Department" means the department of state lands.
 2 ~~(4)~~(5) "Final cut" means the last pit created in an
 3 opencut-mined area.
 4 ~~(5)~~(6) "Highwall" means that side of the pit adjacent
 5 to unmined land.
 6 ~~(6)~~(7) "Landowner" means the owner of land directly or
 7 indirectly affected by an opencut-mining operation.
 8 ~~(7)~~(8) "Opencut mining" means the mining of bentonite,
 9 clay, scoria, phosphate rock, sand, or gravel by removing
 10 the overburden lying upon natural deposits thereof and
 11 mining directly from the natural deposits thereby exposed,
 12 including the removal of overburden for the purpose of
 13 determining the location, quality, or quantity of any
 14 natural deposit of bentonite, clay, scoria, phosphate rock,
 15 sand, or gravel.
 16 ~~(8)~~(9) "Operator" means a person engaged in and
 17 controlling an opencut-mining operation.
 18 ~~(9)~~(10) "Overburden" means all of the earth and other
 19 materials which lie above a natural deposit of bentonite,
 20 clay, scoria, phosphate rock, sand, or gravel. "Spoil" is
 21 the overburden disturbed from its natural state in the
 22 process of opencut mining.
 23 ~~(10)~~(11) "Person" means a natural person or a firm,
 24 association, partnership, cooperative, or corporation or any
 25 department, agency, or instrumentality of the state or any



1 governmental subdivision or any other entity whatever.

2 ~~{11}~~(12) "Progress report" means a report showing the

3 land which the operator has affected by opencut mining

4 during the year. The report shall show the number of acres

5 of affected land and all reclamation accomplished.

6 ~~{12}~~(13) "Public notice" means notice given by

7 publication in a newspaper in the general area where the

8 affected land is located. The notice shall be given once a

9 week for 3 successive weeks.

10 ~~{13}~~(14) "Reclamation" means the reconditioning of the

11 area of land affected by opencut-mining operations to make

12 the area suitable for productive use, including but not

13 limited to forestry, agriculture, grazing, wildlife,

14 recreation, or residential and industrial sites.

15 ~~{14}~~(15) "Reclamation plan" means the description of

16 current land use, topographical data, water data, soils

17 data, leased areas, intended mine areas, and an explanation

18 of proposed reclamation of the land with appropriate maps.

19 ~~{15}~~(16) "Refuse" means all waste material directly

20 connected with the opencut-mining operations.

21 ~~{16}~~(17) "Soils materials" are those horizons

22 containing topsoil or other soils leached free of

23 deleterious salts and capable of sustaining plant growth and

24 recognized as such by standard authorities."

25 Section 2. Section 82-4-434, MCA, is amended to read:

1 "82-4-434. Reclamation plan part of contract --

2 requirements. ~~{1}~~ The contract shall meet the following

3 requirements:

4 ~~{1}~~(1) The operator shall submit a reclamation plan

5 to the board before commencing any opencut mining and may

6 not commence mining before the plan receives approval from

7 the board. The operator may request and receive a meeting

8 with the board prior to submission of the plan. If the board

9 does not notify the operator that it has approved or

10 disapproved a plan within 30 days after the board has

11 received the plan, the board is considered to have approved

12 the plan. The board, however, for sufficient cause, may

13 extend its period of consideration for an additional 30 days

14 if it notifies the operator prior to the end of the original

15 30-day period. The board shall submit each reclamation plan

16 or amendments to the reclamation plan to the landowner for

17 his recommendations and shall consider those recommendations

18 in deciding whether to approve or disapprove any plan or

19 amendments. The board may seek technical help from any state

20 or federal agency. The board shall submit the plan

21 immediately to the director of the university of Montana

22 statewide archaeological survey for evaluation of possible

23 archaeological or historical values in the area to be mined.

24 The board may approve a reclamation plan only if the board

25 has found that the plan provides for the best possible

1 reclamation procedures available under the circumstances at
 2 the time, so that after mining operations are completed the
 3 affected land will be reclaimed to a productive use. Once
 4 the reclamation plan is accepted in writing by the board, it
 5 shall become a part of the contract but is subject to annual
 6 review and modification by the board.

7 (2)(b)(2) The board may not approve any reclamation
 8 plan unless the plan provides:

9 (a)(i)(A) that the land will be reclaimed for one or
 10 more specified uses, including but not limited to forest,
 11 pasture, orchard, cropland, residence, recreation, industry,
 12 habitat for wildlife, including food, cover, or water, or
 13 other uses;

14 (b)(i)(B) that to the extent reasonable and
 15 practicable, the operator will establish vegetative cover
 16 commensurate with the proposed land use;

17 (c)(i)(C) whenever operations result in a need to
 18 prevent acid drainage or sedimentation on or in adjoining
 19 lands or streams, for the construction of earth dams or
 20 other reasonable devices to control water drainage, provided
 21 the formation of such impoundments or devices will not
 22 interfere with other landowners' rights or contribute to
 23 water pollution;

24 (d)(i)(D) that to accomplish practical utilization of
 25 soil materials, such material will be utilized for placement

1 on affected areas, if required by the reclamation plan after
 2 completion or termination of that particular phase of the
 3 mining operations, at a depth sufficient for plant growth on
 4 slopes of 3:1 or less;

5 (e)(v)(E) that grading will be commensurate with the
 6 topography sought and land use designated;

7 (f)(vii)(F) that metal and other waste will be removed
 8 or buried;

9 (g)(viii)(G) that all access, haul, and other support
 10 roads will be located, constructed, and maintained in such a
 11 manner as to control and minimize channeling and other
 12 erosion;

13 (h)(viii)(H) that the operator will submit a progress
 14 report annually to the board, EXCEPT THAT COUNTIES ARE
 15 EXEMPT FROM SUBMITTING ANNUAL REPORTS ON OPENCUT MINES THAT
 16 WERE NOT OPERATED DURING THE PRIOR REPORTING YEAR;

17 (i)(ix)(I) that all operations will be conducted so as
 18 to avoid range and forest fires and spontaneous combustion
 19 and that open burning of carbonaceous materials will be in
 20 accordance with suitable practices for fire prevention and
 21 control;

22 (j)(x)(J) that archaeological and historical values in
 23 areas to be mined will be given appropriate protection;

24 (k)(xi)(K) that except for rock faces, bench faces,
 25 and excavations used for water impoundments, each surface

1 area of the mined premises which will be disturbed will be
2 revegetated when its use for extractive purposes is no
3 longer required;

4 ~~(i)(xii)(L)~~ that seeding and planting will be done in
5 a manner to achieve a permanent suitable vegetative cover
6 for wildlife, livestock, and retardation of erosion and that
7 all seed will be drilled unless otherwise provided in the
8 plan;

9 ~~(m)(xiii)(M)~~ that reclamation will be as concurrent
10 with mining operations as feasible and will be completed
11 within a specified length of time.

12 ~~(j)(e)(3)~~ If reclamation according to the plan has not
13 been completed in the time specified, the board after
14 days' written notice shall order the operator to cease
15 mining and, if the operator does not cease, shall institute
16 an action to enjoin further operation and may sue for
17 damages for breach of contract, for payment of the
18 performance bond, or for both.

19 ~~(d)(4)~~ ~~(a)(i)(A)~~ At any time during the period of
20 reclamation the operator may for good reason submit to the
21 board a new reclamation plan or amendment to the existing
22 plan, including extensions of time.

23 ~~(b)(iii)(B)~~ The board may approve the proposed new
24 reclamation plan or amendments to the existing plan if:

25 ~~(i)(A)(I)~~ the operator has in good faith carried on

1 reclamation according to the existing plan and the proposed
2 new plan or amendments to the existing plan will result in
3 reclamation as or more desirable than the reclamation
4 proposed under the existing plan; or

5 ~~(i)(B)(II)~~ it is highly improbable reclamation will be
6 successful unless the existing plan is replaced or amended.

7 ~~(e)(iii)(C)~~ When accepted, the proposed new
8 reclamation plan or the proposed amendments to the existing
9 plan become a part of the contract.

10 ~~(5)(e)(5)~~ The operator shall provide a performance
11 bond or an alternative acceptable to the board in an amount
12 commensurate with the estimated cost of reclamation, but in
13 no case may the bond be less than \$200 per acre. The
14 estimated cost of reclamation shall be set forth in the
15 reclamation plan.

16 ~~(6)(f)(6)~~ The contract, reclamation plan, and
17 amendments accepted by the board shall be a public record
18 and open to inspection.

19 ~~(7)(g)(7)~~ The contract shall become effective when
20 signed by the board and the operator and shall remain in
21 force until terminated by mutual consent or by the board
22 upon 6 months' notice.

23 ~~(2)--The--provisions--of--this--section--do--not--apply--to~~
24 ~~counties--acting--as--operators--of--open-cut--gravel--mines--under~~
25 ~~this--part:--"~~

1 ~~NEW SECTION. Section 3. Reporting by counties. An~~
 2 ~~annual departmental inspection. (1) Any county having one~~
 3 ~~or more open-cut gravel mining operations requiring a~~
 4 ~~contract under 82-4-431 shall submit an annual progress~~
 5 ~~report describing the reclamation activities at each of~~
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 7 ~~include a list of the open-cut gravel mining operations, the~~
 8 ~~number of yards mined at each mining operation, and an~~
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11 ~~(2) The department shall conduct an annual inspection~~
 12 ~~of all county-operated open-cut gravel mining operations that~~
 13 ~~require a contract under 82-4-431. If the department~~
 14 ~~determines that a county has not made satisfactory progress~~
 15 ~~in reclaiming a disturbed area at one of these mining~~
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 17 ~~written notice to the county that it has 1 year from receipt~~
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 19 ~~specifications, as stated in the notice.~~

20 ~~(3) If the county fails to meet the departmental~~
 21 ~~specifications within the specified time, the department may~~
 22 ~~recommend and the board may order that the county comply~~
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 24 ~~until the county demonstrates its adherence to the policy~~
 25 ~~expressed in 82-4-402.~~

1 ~~NEW SECTION. Section 3. Extension of authority. Any~~
 2 ~~existing authority of the board of land commissioners to~~
 3 ~~make rules on the subject of the provisions of this act is~~
 4 ~~extended to the provisions of this act.~~

5 ~~NEW SECTION. Section 5. Codification. Instruction:~~
 6 ~~Section 3 is intended to be an integral part of Title 82,~~
 7 ~~chapter 4, part 4, and the provisions of Title 82, chapter~~
 8 ~~4, part 4, apply to section 3.~~

-End-

1 HOUSE BILL NO. 695

2 INTRODUCED BY ASAY

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6 ~~REQUIREMENTS-IN-THE-OPENCUT-MINING-ACT,--REQUIRING--COUNTIES~~
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5 to unmined land.

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11 mining directly from the natural deposits thereby exposed,
12 including the removal of overburden for the purpose of
13 determining the location, quality, or quantity of any
14 natural deposit of bentonite, clay, scoria, phosphate rock,
15 sand, or gravel.

16 ~~(8)~~(9) "Operator" means a person engaged in and
17 controlling an opencut-mining operation.

18 ~~(9)~~(10) "Overburden" means all of the earth and other
19 materials which lie above a natural deposit of bentonite,
20 clay, scoria, phosphate rock, sand, or gravel. "Spoil" is
21 the overburden disturbed from its natural state in the
22 process of opencut mining.

23 ~~(10)~~(11) "Person" means a natural person or a firm,
24 association, partnership, cooperative, or corporation or any
25 department, agency, or instrumentality of the state or any

1 governmental subdivision or any other entity whatever.

2 ~~(11)~~(12) "Progress report" means a report showing the
3 land which the operator has affected by opencut mining
4 during the year. The report shall show the number of acres
5 of affected land and all reclamation accomplished.

6 ~~(12)~~(13) "Public notice" means notice given by
7 publication in a newspaper in the general area where the
8 affected land is located. The notice shall be given once a
9 week for 3 successive weeks.

10 ~~(13)~~(14) "Reclamation" means the reconditioning of the
11 area of land affected by opencut-mining operations to make
12 the area suitable for productive use, including but not
13 limited to forestry, agriculture, grazing, wildlife,
14 recreation, or residential and industrial sites.

15 ~~(14)~~(15) "Reclamation plan" means the description of
16 current land use, topographical data, water data, soils
17 data, leased areas, intended mine areas, and an explanation
18 of proposed reclamation of the land with appropriate maps.

19 ~~(15)~~(16) "Refuse" means all waste material directly
20 connected with the opencut-mining operations.

21 ~~(16)~~(17) "Soils materials" are those horizons
22 containing topsoil or other soils leached free of
23 deleterious salts and capable of sustaining plant growth and
24 recognized as such by standard authorities."

25 Section 2. Section 82-4-434, MCA, is amended to read:

1 "82-4-434. Reclamation plan part of contract --
2 requirements. ~~(11)~~ The contract shall meet the following
3 requirements:

4 ~~(11)~~(a)(1) The operator shall submit a reclamation plan
5 to the board before commencing any opencut mining and may
6 not commence mining before the plan receives approval from
7 the board. The operator may request and receive a meeting
8 with the board prior to submission of the plan. If the board
9 does not notify the operator that it has approved or
10 disapproved a plan within 30 days after the board has
11 received the plan, the board is considered to have approved
12 the plan. The board, however, for sufficient cause, may
13 extend its period of consideration for an additional 30 days
14 if it notifies the operator prior to the end of the original
15 30-day period. The board shall submit each reclamation plan
16 or amendments to the reclamation plan to the landowner for
17 his recommendations and shall consider those recommendations
18 in deciding whether to approve or disapprove any plan or
19 amendments. The board may seek technical help from any state
20 or federal agency. The board shall submit the plan
21 immediately to the director of the university of Montana
22 statewide archaeological survey for evaluation of possible
23 archaeological or historical values in the area to be mined.
24 The board may approve a reclamation plan only if the board
25 has found that the plan provides for the best possible

1 reclamation procedures available under the circumstances at
 2 the time, so that after mining operations are completed the
 3 affected land will be reclaimed to a productive use. Once
 4 the reclamation plan is accepted in writing by the board, it
 5 shall become a part of the contract but is subject to annual
 6 review and modification by the board.

7 (2)(b)(2) The board may not approve any reclamation
 8 plan unless the plan provides:

9 (a)(i)(A) that the land will be reclaimed for one or
 10 more specified uses, including but not limited to forest,
 11 pasture, orchard, cropland, residence, recreation, industry,
 12 habitat for wildlife, including food, cover, or water, or
 13 other uses;

14 (b)(i)(B) that to the extent reasonable and
 15 practicable, the operator will establish vegetative cover
 16 commensurate with the proposed land use;

17 (c)(i)(C) whenever operations result in a need to
 18 prevent acid drainage or sedimentation on or in adjoining
 19 lands or streams, for the construction of earth dams or
 20 other reasonable devices to control water drainage, provided
 21 the formation of such impoundments or devices will not
 22 interfere with other landowners' rights or contribute to
 23 water pollution;

24 (d)(iv)(D) that to accomplish practical utilization of
 25 soil materials, such material will be utilized for placement

1 on affected areas, if required by the reclamation plan after
 2 completion or termination of that particular phase of the
 3 mining operations, at a depth sufficient for plant growth on
 4 slopes of 3:1 or less;

5 (e)(v)(E) that grading will be commensurate with the
 6 topography sought and land use designated;

7 (f)(vi)(F) that metal and other waste will be removed
 8 or buried;

9 (g)(vii)(G) that all access, haul, and other support
 10 roads will be located, constructed, and maintained in such a
 11 manner as to control and minimize channeling and other
 12 erosion;

13 (h)(viii)(H) that the operator will submit a progress
 14 report annually to the board, EXCEPT THAT COUNTIES ARE
 15 EXEMPT FROM SUBMITTING ANNUAL REPORTS ON OPENCUT MINES THAT
 16 WERE NOT OPERATED DURING THE PRIOR REPORTING YEAR;

17 (i)(ix)(I) that all operations will be conducted so as
 18 to avoid range and forest fires and spontaneous combustion
 19 and that open burning of carbonaceous materials will be in
 20 accordance with suitable practices for fire prevention and
 21 control;

22 (j)(x)(J) that archaeological and historical values in
 23 areas to be mined will be given appropriate protection;

24 (k)(xi)(K) that except for rock faces, bench faces,
 25 and excavations used for water impoundments, each surface

1 area of the mined premises which will be disturbed will be
 2 revegetated when its use for extractive purposes is no
 3 longer required;

4 ~~(1)(iii)(L)~~ that seeding and planting will be done in
 5 a manner to achieve a permanent suitable vegetative cover
 6 for wildlife, livestock, and retardation of erosion and that
 7 all seed will be drilled unless otherwise provided in the
 8 plan;

9 ~~(m)(iii)(M)~~ that reclamation will be as concurrent
 10 with mining operations as feasible and will be completed
 11 within a specified length of time.

12 ~~(3)(e)(3)~~ If reclamation according to the plan has not
 13 been completed in the time specified, the board after 30
 14 days' written notice shall order the operator to cease
 15 mining and, if the operator does not cease, shall institute
 16 an action to enjoin further operation and may sue for
 17 damages for breach of contract, for payment of the
 18 performance bond, or for both.

19 ~~(4)(d)(4)~~ ~~(a)(i)(A)~~ At any time during the period of
 20 reclamation the operator may for good reason submit to the
 21 board a new reclamation plan or amendment to the existing
 22 plan, including extensions of time.

23 ~~(b)(iii)(B)~~ The board may approve the proposed new
 24 reclamation plan or amendments to the existing plan if:

25 ~~(1)(A)(I)~~ the operator has in good faith carried on

1 reclamation according to the existing plan and the proposed
 2 new plan or amendments to the existing plan will result in
 3 reclamation as or more desirable than the reclamation
 4 proposed under the existing plan; or

5 ~~(ii)(B)(II)~~ it is highly improbable reclamation will be
 6 successful unless the existing plan is replaced or amended.

7 ~~(c)(iii)(C)~~ When accepted, the proposed new
 8 reclamation plan or the proposed amendments to the existing
 9 plan become a part of the contract.

10 ~~(5)(e)(5)~~ The operator shall provide a performance
 11 bond or an alternative acceptable to the board in an amount
 12 commensurate with the estimated cost of reclamation, but in
 13 no case may the bond be less than \$200 per acre. The
 14 estimated cost of reclamation shall be set forth in the
 15 reclamation plan.

16 ~~(6)(f)(6)~~ The contract, reclamation plan, and
 17 amendments accepted by the board shall be a public record
 18 and open to inspection.

19 ~~(7)(g)(7)~~ The contract shall become effective when
 20 signed by the board and the operator and shall remain in
 21 force until terminated by mutual consent or by the board
 22 upon 6 months' notice.

23 ~~(2)--The--provisions--of--this--section--do--not--apply--to~~
 24 ~~counties-acting-as-operators-of-open-pit-gravel-mine--under~~
 25 ~~this-part."~~

1 ~~NEW SECTION. Section 3. Reporting by counties. Any~~
 2 ~~annual departmental inspection. (1) Any county having one~~
 3 ~~or more open cut gravel mining operations requiring a~~
 4 ~~contract under 82-4-431 shall submit an annual progress~~
 5 ~~report describing the reclamation activities at each of~~
 6 ~~these open cut gravel mining operations. The report must~~
 7 ~~include a list of the open cut gravel mining operations, the~~
 8 ~~number of yards mined at each mining operation, and an~~
 9 ~~assessment of the reclamation activity at each mining~~
 10 ~~operation.~~

11 ~~(2) The department shall conduct an annual inspection~~
 12 ~~of all county operated open cut gravel mining operations that~~
 13 ~~require a contract under 82-4-431. If the department~~
 14 ~~determines that a county has not made satisfactory progress~~
 15 ~~in reclaiming a disturbed area at one of these mining~~
 16 ~~operations while the mining is progressing, it shall provide~~
 17 ~~written notice to the county that it has 1 year from receipt~~
 18 ~~of the notice to reclaim the area to departmental~~
 19 ~~specifications, as stated in the notice.~~

20 ~~(3) If the county fails to meet the departmental~~
 21 ~~specifications within the specified time, the department may~~
 22 ~~recommend and the board may order that the county comply~~
 23 ~~with the provisions of 82-4-434 for that mining operation~~
 24 ~~until the county demonstrates its adherence to the policy~~
 25 ~~expressed in 82-4-402.~~

1 ~~NEW SECTION. Section 3. Extension of authority. Any~~
 2 ~~existing authority of the board of land commissioners to~~
 3 ~~make rules on the subject of the provisions of this act is~~
 4 ~~extended to the provisions of this act.~~

5 ~~NEW SECTION. Section 5. Codification. Instruction~~
 6 ~~Section 3 is intended to be an integral part of Title 82,~~
 7 ~~chapter 4, part 4, and the provisions of Title 82, chapter~~
 8 ~~4, part 4, apply to section 3.~~

-End-